

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18346
[REDACTED])	
Petitioners.)	DECISION
)	
)	

On March 1, 2004, the Revenue Operations Division (RevOp) of the Idaho State Tax Commission denied a request by [Redacted] (taxpayers) for a refund of Idaho individual income tax in the amount of \$538 for the period ending December 31, 1998.

The taxpayers filed a timely protest and petition for redetermination of the refund denial. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

On November 28, 2003, the Tax Commission's Tax Discovery Bureau sent the taxpayers a letter asking them about their 1998 Idaho income tax return because the Tax Commission records did not include the taxpayers' return for that year. The taxpayers sent back the completed inquiry form and a letter stating they believed they had electronically filed their Idaho return that year.

On January 12, 2004, the Tax Commission received the taxpayers' 1998 Idaho return showing a tax due of \$649. RevOp reviewed the return and the W-2 that was attached and discovered the taxpayers' preparer had failed to take credit in the return for the Idaho withholding shown in the W-2. RevOp's correction of that return resulted in a refund of \$538. However, because the time for claiming that refund had expired, a letter was sent to the taxpayers informing them of the adjustment and denial of the refund.

The taxpayers objected to the denial of their refund, and a certified notice was sent to them to allow them the opportunity for administrative review. Their file was transferred to the Legal/Tax

Policy Division for review by the Commission.

In their letter of protest, the taxpayers stated: “Our 1998 Form 40 Tax Return shows we were due a refund of \$1,314.” The Tax Commission has reviewed the taxpayers’ 1998 state and federal returns and found the refund of \$1,314 is shown in the taxpayers’ federal return, not their Idaho return. The corrected Idaho Form 40 shows a refund of \$538.

Idaho Code provides for a limit on the time taxpayers have to claim a credit or refund as follows:

63-3072. Credits and refunds. (a) Subject to the provisions of subsections (c) and (g) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) The state tax commission is authorized, and the state board of tax appeals is authorized to order the state tax commission in proper cases, to credit, remit, refund, or pay back all tax, penalties, and interest, erroneously or illegally assessed or collected, regardless of whether the same have been paid under protest, which claim for refund shall be certified to the state board of examiners by the state tax commission.

(c) Except as provided in subsection (e) of section 63-3035, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions. (Emphasis added.)

Idaho Code § 63-3035(e) states:

(e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and

the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his Idaho taxable income, or where his income is not taxable under this chapter, the state tax commission shall, after examining the annual return filed by the employee in accordance with this chapter, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted. **No credit or refund shall be made to an employee who fails to file his return, as required under this chapter, within three (3) years from the due date of the return, without regard to extensions, in respect of which the tax withheld might have been credited. In the event that the excess tax deducted is less than one dollar (\$1.00), no refund shall be made unless specifically requested by the taxpayer at the time such return is filed.** (Emphasis added.)

Idaho law provides for a credit or refund of any overpayment; however, the claim for the credit or refund must be made within a certain timeframe. The Tax Commission did not get the taxpayers' claim for a refund until the taxpayers' return was received on January 12, 2004. Unfortunately, the time allowed for claiming the 1998 refund expired on April 15, 2002.

The taxpayers requested the refund be issued stating: "We believe it is arbitrary, capricious and unfair for you to refuse to refund the money we were due in light of the fact that you failed to notify us until late 2003 that you never received the 1998 Return."

Idaho Code §§ 63-3072 and 63-3035 are clear and unequivocal. The language in these sections "shall be made. . ." is not discretionary, but rather, it is mandatory. The Tax Commission finds Idaho Code § 63-3072(c), cited above, is controlling with respect to the taxpayers' refund claim for tax year 1998. No credit or refund can be given.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated March 1, 2004, that denies the taxpayer a refund is APPROVED, AFFIRMED, and MADE FINAL.

An explanation of taxpayers' right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2004, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]
[REDACTED]
[REDACTED]

Receipt No.
